Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	))))	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	))	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

REPLY COMMENTS OF AT&T INC.

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INTRODUCTION AND SUMMARY

Commenters from all corners of this industry have joined AT&T in supporting the key elements of the framework proposed in the November 5, 2008 *Further Notice*[1] for reform of the existing intercarrier compensation and universal service regimes. These commenters include wireless carriers such as Sprint Nextel, cable companies such as Comcast, independent transport providers such as Global Crossing, and the hundreds of rural telephone companies represented here by OPASTCO and WTA. Indeed, there is remarkable consensus even among the *opponents* of the Commission's reform proposals that today's regulatory mechanisms are broken. The vast majority of commenters agree that the current rules arbitrarily impose different rates for identical functions and invite market-distorting arbitrage schemes such as phantom traffic and traffic pumping; that such schemes are severe problems that cry out for immediate solutions; that the implicit subsidies embedded in today's bloated intercarrier compensation rates cannot withstand the industry's accelerating transition to broadband IP-based technologies; and that the ultimate victims of continued regulatory inertia would be millions of American consumers.

As Free Press recognizes, "we no longer live in the 20th century POTS world; we are in the converged broadband era. With this recognition comes the responsibility to launch a complete overhaul of the old regulatory model, which was built for carriers whose main income streams were earned in monopoly markets from price-regulated services."[2] There is no other

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[1] Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), FCC No. 08-262 (rel. Nov. 5, 2008) ("*Further Notice*").

[2] Free Press Comments at 5.

option. In this environment, "it is almost certain that rural Americans will not benefit from merely letting present trends continue."[3]

A number of commenters nonetheless quarrel with the details of the proposed transition to a more rational regime. It is no surprise that this proposal is controversial. Any effective reform plan will necessarily require everyone to make some sacrifices, and many stakeholders will predictably argue that the sacrifices should be borne exclusively by others. That is why this set of proceedings has been one prolonged stalemate for many years. As noted in our opening comments, AT&T—the nation's largest ILEC—itself stands to lose hundreds of millions of dollars per year in forgone access charges and CETC funding, and it cannot hope to be "made whole" through increases in end-user rates and access-charge savings.[4] Nor does it expect to receive any supplemental universal service funding designed to facilitate the transition. But AT&T supports the Commission's reform proposals nonetheless because it has a long-term interest in stable, rational, and equitable intercarrier compensation mechanisms and, more broadly, in the health and efficiency of the telecommunications marketplace as a whole.

The Commission cannot responsibly delay reform still longer in a vain hope for perfect consensus. There will *never be* a perfect consensus, and there is no time left to wait for one. Nor would it be appropriate for the Commission to punt this set of issues into the indefinite future on the theory, raised by some commenters, that stakeholders have had too little time to consider the current proposals.[5] Although the details differ, these proposals are derivations of industry plans that have been pending before the Commission for years, such as the Missoula

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[3] *Id.* at 10.

[4] AT&T Comments at 3, 18-19, 42-44.

[5] *See, e.g.*, Initial Comments of the National Ass'n of Regulatory Utility Commissioners at 3-4 ("NARUC Comments"); Comments of the Rural Telecommunications Group, Inc. at 2-4.

Plan submitted in 2006 and the Intercarrier Compensation Forum (ICF) plan submitted in 2004. The current proposals share many of the same basic reform elements as those previous proposals, including (i) phased-in reductions to (and substantial unification of) termination charges for all traffic;[6] (ii) opportunities (not guarantees) for ILECs to try to recover higher end-user charges, subject to caps and competitive pressures, to replace funds formerly provided by access charges;[7] and (iii) new explicit support mechanisms for rural carriers to compensate for the elimination of implicit cross-subsidies.[8] Indeed, as AT&T has previously explained, these are the likely elements of *any* effective reform proposal; the question for the Commission is how best to balance the trade-offs presented as the Commission fine-tunes these elements.[9] That core question has now been teed up for several years, and interested parties have had abundant opportunities for debate. Further delay would be as pointless as it would be irresponsible.

Many of the most fervent opponents of regulatory reform are ILECs and CLECs that warn of dire financial consequences if they lose their streams of above-cost access charges. But the prospect of lost access charges is an argument for, not against, the Commission's reform plan. With the explosive proliferation of VoIP and other bypass technologies, access charges will all but disappear within several years *no matter what the Commission does in this*

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[6] Letter from NARUC Task Force on Intercarrier Compensation to Chairman Kevin Martin, FCC, attaching Missoula Plan, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Section II.B at 7-19 (filed July 24, 2006) ("*Missoula Plan*"); Ex Parte Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Appx. A, Section III.A through Section III.E at 31-48 (filed Oct. 5, 2004) ("*ICF Plan*").

[7] *Missoula Plan*, Section II.C at 19-24; *ICF Plan*, Section III.G through Section III.J at 60-68.

[8] *Missoula Plan*, Section VI at 63-79; *ICF Plan*, Section III.F at 48-60, Section IV at 69-75.

[9] *See* Letter from Robert W. Quinn, Jr., AT&T, to Chairman Kevin Martin, FCC, CC Dkt. No. 01-92 *et al.* (filed July 17, 2008) ("*AT&T July 17, 2008 Letter*").

proceeding. The LECs advocating against the reforms proposed here would score a truly pyrrhic victory if they managed to retain high access *charges* but thereby accelerated the erosion of their access *minutes* until they approach zero. Indeed, this concern holds true not just for access charges, but for all termination rates that exceed incremental cost. In the next several years, most voice calls will become mere applications that ride on top of broadband and/or wireless platforms from end to end, and voice providers will seek to avoid above-cost termination fees simply by bypassing circuit-switched wireline networks altogether. In this environment, traditional LECs should welcome an orderly phase-down of all termination rates to incremental cost as part of a plan that affords them an opportunity to recover at least some of the funds formerly provided by intercarrier charges through higher end-user rates and (in the case of smaller carriers) new universal service mechanisms. That proposal offers the only means of stabilizing the industry and giving today's LECs an opportunity to play a role in tomorrow's marketplace. The LECs opposing the Commission's reform plan are not merely rearranging deck chairs on the Titanic; they are torching their own lifeboats as well.

The coming months may present the last clear chance for the Commission to implement comprehensive reform while there is still time to avoid massive industry dislocations. Reform on this scale is necessarily painful in some respects and controversial in others. But the Commission exists because someone needs to make the hard regulatory choices needed to promote the long-term interests of American consumers. Further delay would be an abdication of that basic responsibility.

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These reply comments are divided into several sections. Section I addresses jurisdictional challenges to the Commission's authority to reform intercarrier compensation for all categories of traffic. Section II addresses various issues relating to the Commission's proposed reduction of intercarrier compensation levels to incremental cost and the corresponding SLC-cap increases. Section III rebuts various CLEC arguments against the proposed "network edge" default rules and for new regulation of transit services. Section IV addresses three urgent intercarrier compensation problems that demand an immediate solution no matter what other reforms the Commission may undertake in this proceeding: the issues of VoIP access charges, traffic pumping, and phantom traffic. Finally, Section V addresses the universal service dimensions of the Commission's proposed reform plan.

ARGUMENT

I. THE 1996 ACT GRANTS THE COMMISSION PLENARY JURISDICTION TO REFORM INTERCARRIER COMPENSATION

As in prior comment rounds, several parties continue to challenge the Commission's authority to bring national uniformity to a field that badly needs it. They claim that although the Commission may reform intercarrier compensation for (i) all traffic that terminates to a wireless carrier, and for all wireline-terminated traffic that is either (ii) "interstate" or (iii) both "intrastate" and "local," it may not reform intercarrier compensation for wireline-terminated traffic that is (iv) "intrastate" but *not* "local" under some definition of that term. As the *Appendix C Draft Order*[10] rightly concludes (at ¶¶ 210-24), nothing in the statute holds the Commission's reform plans hostage to these anachronistic and arbitrary jurisdictional distinctions.

Some of the commenters who attack the Commission's jurisdiction appear oblivious to Congress's fundamental decision in the Telecommunications Act of 1996 to erase legacy

[10] Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), FCC No. 08-262, at Appx. C (rel. Nov. 5, 2008) ("*Appendix C Draft Order*" or "*Draft Order*").

jurisdictional distinctions in the regulation of carrier-to-carrier relationships and to grant the Commission plenary authority to reform telecommunications regulation in an age of increasing convergence.[11] For example, one set of commenters trumpets the Eighth Circuit's 1997 conclusion that, despite the 1996 Act, Section 2(b) of the Communications Act operates as a "'hog tight, horse high, and bull strong' jurisdictional fence" that generally bars the Commission from addressing carrier-to-carrier transactions that could be characterized as "intrastate."[12] But their reliance on this familiar passage is perplexing because, in *AT&T Corp. v. Iowa Utilities Board*, the Supreme Court reversed the Eighth Circuit's holding on this very point and confirmed that, "[w]ith regard to the matters addressed by the 1996 Act," including those with "intrastate" components, the Commission "unquestionably" may "draw the lines to which [the state commissions] must hew."[13]

The field of intercarrier compensation is a "matter[] addressed by the 1996 Act." As the *Appendix C Draft Order* explains, Section 251(b)(5) applies to, and thus authorizes the Commission to bring national consistency to, intercarrier compensation for any exchange of telecommunications traffic. By its terms, that provision extends to all compensation issues relating to the transport and termination of "telecommunications" involving at least one local exchange carrier. Section 251(b)(5) makes no distinctions among traffic on the basis of jurisdiction ("local," "toll," "intrastate," or "interstate") or service definition (*e.g.*, "exchange

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[11] *See, e.g.*, Joint Comments of Citynet, LLC, Granite Telecommunications, Inc., PAETEC Communications, Inc., RCN Telecom Services, Inc., and U.S. TelePacific Corp. at 4 ("Citynet Comments"); Initial Comments of the National Telecommunications Cooperative Ass'n at 32-37 ("NTCA Comments").

[12] Citynet Comments at 4; *see also* Comments of Broadview Networks, Inc., Cavalier Telephone, NuVox, and XO Communications, LLC at 19-24 ("Broadview Comments") (emphasizing importance of Section 2(b)).

[13] 525 U.S. 366, 378 n.6 (1999).

access," "information access," or "exchange service"). All such traffic is plainly "telecommunications." If it had wished, Congress could have limited the scope of this provision to "local telecommunications," to "telecommunications that originate and terminate within the same local calling area," or to "telecommunications handed off from one LEC directly to another LEC." But Congress included no such limitations on the scope of Section 251(b)(5). Instead, it drafted Section 251(b)(5) broadly to address *all* "telecommunications," the most expansive of the statute's defined terms.[14]

As the *Appendix C Draft Order* further explains, the Commission has always construed Section 251(b)(5) to reach the exchange of any traffic involving at least one LEC, not (as some commenters here submit) just traffic between two LECs.[15] Although the *obligation* to establish reciprocal compensation arrangements for the transport and termination of telecommunications falls on LECs, Congress did not limit the class of potential *beneficiaries* of that obligation to other LECs. Some commenters nonetheless contend that inclusion of the word "reciprocal" in Section 251(b)(5) somehow confines the scope of that provision to exchanges of "local" traffic between two LECs, because "[i]nterexchange carriers and local exchange carriers do not exchange traffic in any way . . . that would cause an IXC and a LEC to compensate the other

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14 *See* 47 U.S.C. § 153(43); *see generally United States Telecom Ass'n v. FCC*, 359 F.3d 554, 592 (D.C. Cir. 2004) (rejecting Commission's efforts to narrow the definition of "telecommunications services" for purposes of Section 251(d)(2) and holding that "[e]ven under the deferential *Chevron* standard of review, an agency cannot, absent strong structural or contextual evidence, exclude from coverage certain items that clearly fall within the plain meaning of a statutory term").

15 *See Appendix C Draft Order* ¶ 217; *see also* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16016 ¶ 1041 (1996) ("*Local Competition Order*") ("Although section 251(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to *any* telecommunications carriers," including non-LEC CMRS providers) (emphasis added).

reciprocally."[16] But this argument makes no sense in the modern telecommunications marketplace, where increasingly every LEC is an IXC and vice versa. It also proves far too much. Even in the context of "local" calls, intermediate transit providers routinely hand off traffic to LECs, and no one has suggested that Section 251(b)(5) suddenly becomes inapplicable to that traffic simply because a transit provider sits between the originating and terminating providers. In sum, the term "reciprocal" appears in Section 251(b)(5) simply to confirm that compensation arrangements must be reciprocal whenever two LECs do exchange traffic bound for each other's customers, but it does not otherwise restrict the unambiguously broad scope of Section 251(b)(5).

The effort to carve up the Commission's rulemaking authority on the basis of legacy jurisdictional categories is strikingly similar to the state commissions' unavailing attacks in the 1990s on the Commission's jurisdiction to implement Sections 251 and 252 more generally. Here, as in that context, the attempt to "produce[] a most chopped-up statute" along jurisdictional lines is flawed both because it violates the statutory text and because, to borrow the Supreme Court's words, it is "most unlikely that Congress created such a strange hodgepodge."[17]
It would have been especially perverse for Congress to have authorized the Commission to reform intercarrier compensation rules relating to "local" and "interstate" traffic but not the rules applicable to the one class of traffic—intrastate access—that is subject to the *highest* above-cost charges and that is generally thought to be most laden with unsustainable implicit support. Indeed, no commenter seriously opposes reducing current levels of intrastate access charges to interstate access levels or below. At the same time, no opponent of the Commission's reform plan explains how that will happen unless the Commission acts to lower them. NTCA suggests

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16 Broadview Comments at 28.

17 *Iowa Utils. Bd.*, 525 U.S. at 381 n.8.

that the Commission "[a]llow state commissions to reduce voluntarily, on a company-by-company basis, intrastate . . . access rates to interstate . . . levels over a reasonable period of time."[18] But of course state commissions have always been "allowed" to lower their intrastate access charges, and yet intrastate access levels remain grossly inflated in many (though not all) states.[19] If the Commission lacked authority to establish a national solution for this national problem, the problem would never get fixed.

In a separate attack on the Commission's jurisdiction, Broadview claims that, because the Section 251(g) "grandfathering" provision extends to preexisting intrastate access charges, it somehow carves out intrastate access traffic from the scope of Section 251(b)(5).[20] In fact, Section 251(g) supports exactly the opposite conclusion. Section 251(g) *temporarily* grandfathers the pre-1996 rules applicable to access traffic, including rules governing "receipt of compensation," until the Commission exercises its discretion to "supersede[]" these legacy rules with generally applicable rules promulgated under Section 251(b)(5).[21] There would have been little need for Congress to preserve those legacy rules against the effects of Section 251 if

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18 NTCA Comments at 3. NTCA does propose that the Commission "freeze interstate originating and terminating access rates in order to keep interstate access rates from increasing." *Id.* That proposal, while obviously sound on the merits, logically contradicts NTCA's separate insistence that access charges are somehow cost-based and should therefore increase if costs increase.

19 The Nebraska Public Service Commission urges the Commission to adopt a "benchmark" mechanism that would avoid placing consumers in states that have already implemented substantial reforms "at a disadvantage in comparison to other states which have not rebalanced local rates, lowered access charges or adopted state universal service programs." Comments of the Nebraska Public Service Commission at 6 ("Nebraska PSC Comments"). Others similarly endorse a benchmark to avoid extreme rate increases. *See, e.g.*, Comments of the United States Telecom Ass'n at 7-8 ("USTelecom Comments"). AT&T has endorsed this benchmark concept in the past, *see AT&T July 17, 2008 Letter* at 5-6, and recommends that the Commission consider adding it to its overall reform plan.

20 *E.g.*, Broadview Comments at 26-28.

21 47 U.S.C. § 251(g).

Section 251(b)(5) did not in fact address the "receipt of compensation" for the traffic covered by Section 251(g)—*i.e.*, all access traffic, including all intrastate access traffic.[22]

Because Congress is presumed not to have filled this statute with pointless surplusage, the only sensible interpretation of Section 251(g) confirms what Section 251(b)(5) already makes clear on its face: intercarrier compensation for all access traffic falls within the broad scope of the Commission's jurisdiction to implement Section 251, subject only to the temporary grandfathering provisions of Section 251(g). Moreover, the Commission's authority to issue rules "supersed[ing]" the preexisting access regime for purposes of Section 251(g) is plenary: it is not, as Broadview suggests, confined to preexisting rules for *interstate* access traffic. Once the Commission removes any class of traffic from the scope of Section 251(g), that traffic becomes subject to Section 251(b)(5) as it would have been all along if Congress had not temporarily grandfathered such traffic from the effects of Section 251 in the first place.

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[22] As the Commission has long recognized, the "section 251(g) carve-out includes intrastate access services." Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, 4722 ¶ 79 (2005) ("*2005 Intercarrier Compensation FNPRM*"). This conclusion, which Broadview endorses (Comments at 27), is correct. No less than its interstate counterpart, the intrastate access charge regime falls within the temporary grandfathering mechanism set forth in 47 U.S.C. § 251(g) for "equal access and nondiscriminatory interconnection . . . obligations (including receipt of compensation) . . . under any court order, consent decree," or FCC order. Before 1982, compensation for interexchange access was generally derived through an AT&T-administered system of settlements and division of revenues. *See* Second Supplemental Notice of Inquiry and Proposed Rulemaking, *MTS and WATS Market Structure*, 77 F.C.C.2d 224, 227-28, 234 ¶¶ 15-19, 47 (1980). The AT&T consent decree replaced that system with a regime of federal *and* intrastate access charges. *See United States v. AT&T Co.*, 552 F. Supp. 131, 227, 232-33 (D.D.C. 1982); Third Report and Order, *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 246 ¶ 11 (1983). The court order accompanying the consent decree made clear that the decree required access charges to be used in both the interstate and intrastate jurisdictions: "Under the proposed decree, state regulators will set access charges for intrastate interexchange service and the FCC will set access charges for interstate interexchange service." *AT&T*, 552 F. Supp. at 169 n.161. Thus, both interstate and intrastate access charges were born of the same "consent decree," and both are preserved under Section 251(g) until superseded by new Commission regulations.

Of course, these statutory provisions are hardly pellucid; as the Supreme Court has observed, the 1996 Act "is in many important respects a model of ambiguity or indeed even self-contradiction."[23] But the Commission receives the greatest judicial deference when construing provisions like these, because "Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency."[24] Here, the Commission should exercise its interpretive discretion by making sense of this statutory scheme as a whole, and that means bringing genuine intercarrier compensation reform to all classes of telecommunications traffic, not just arbitrarily defined subsets of that traffic.[25]

II. THE *APPENDIX C DRAFT ORDER* PRESCRIBES A REASONABLE AND MUCH-NEEDED PLAN FOR WEANING LECS FROM UNSUSTAINABLE RELIANCE ON INTERCARRIER COMPENSATION

A. The Challenges To The Proposed Incremental-Cost Methodology Are Misplaced

A wide range of commenters support the Commission's proposed "incremental cost" methodology, including not just AT&T and other ILECs, but also, for example, Sprint Nextel, Comcast, and Global Crossing. As explained in our opening comments, that methodology is, if anything, more faithful than TELRIC to the "additional cost" standard of Section

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23 *Iowa Utils. Bd.*, 525 U.S. at 397.

24 *Id.*

25 As AT&T has previously explained, the Commission could alternatively justify rules governing all intercarrier compensation by invoking its authority under footnote 4 of *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986), to exercise preemptive federal authority under Section 201 where it is "*not* possible to separate the interstate and the intrastate components" of the regulated field, *id.* at 375 n.4. *See* Reply Comments of AT&T Inc. on the Missoula Plan for Intercarrier Compensation Reform, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 41-47 (filed Feb. 1, 2007) ("AT&T Missoula Reply Comments"); *see also* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 01-92 and WC Docket Nos. 04-36 and 06-122 (filed September 19, 2008) (invoking conflict preemption principles). The Commission should consider adopting that rationale as an alternative, belt-and-suspenders justification for the intercarrier compensation reforms contained in the *Appendix C Draft Order*.

252(d)(2)(A)(ii). AT&T Comments at 9-10. And as we further explained, the incremental-cost methodology is far preferable to TELRIC's average-cost approach as a mechanism for setting termination rates. *Id.* at 9-13. By reducing intercarrier compensation levels, the incremental-cost methodology will force most carriers to rely primarily on their own end users for recovery of their network costs rather than on other carriers and, ultimately, *their* end users. Because retail rates are subject to competition and intercarrier compensation rates are not, this shift in cost-recovery mechanisms will reward efficient carriers, punish inefficient ones, and make each carrier more accountable to its own end users.

Moreover, because per-minute rates based on incremental cost actually track the manner in which carriers incur termination costs, the incremental-cost approach will avoid the rate-structure anomalies caused by TELRIC. As we have explained (AT&T Comments at 11), TELRIC, as an average-cost methodology, unavoidably gives each carrier perverse incentives to terminate as many minutes as possible to recover the inevitable margin between average and incremental costs. Although ITTA implausibly contends that TELRIC has stood the test of time because it has "produced reasonable rates,"[26] TELRIC is in fact responsible for one of the most destabilizing episodes in post-1996 telecommunications history: the rise and collapse of an entire generation of carriers that specialized in serving dial-up ISPs simply to avail themselves of inflated TELRIC-based termination rates. The Commission did not fix that problem by reforming TELRIC; instead, it fixed the problem by reducing termination rates for ISP-bound traffic to $0.0007 per minute, which—because of the mirroring rule (*see* AT&T Comments at 34-35)—is the effective termination rate for much PSTN-based traffic today.

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[26] Comments of the Independent Telephone and Telecommunications Alliance at 12 ("ITTA Comments").

The opponents of the proposed incremental-cost standard simply miss these points. In a nutshell, they contend that the incremental-cost standard is methodologically "absurd" because, by design, it would not enable them to recover their average costs *if they relied solely on intercarrier compensation for cost recovery*.[27] These opponents appear to forget that each carrier also has wholesale and retail *customers* who pay fees in exchange for the carrier's services. In the aggregate, the fees that the nation's carriers charge their customers finance—directly or indirectly—essentially all of the costs of the national telecommunications infrastructure. The main question in this proceeding is the extent to which each carrier will recover *its own* network costs from *its own* customers, as opposed to recovering those costs from interconnecting carriers and ultimately *their* customers. As AT&T has long argued, the telecommunications marketplace will become more efficient, and customers as a whole will pay less for better services, if each carrier is required to rely increasingly on end-user charges for the recovery of its own network costs—and certainly for recovery of its joint and common costs. Of course, that end-user-focused cost recovery regime should be supplemented, as appropriate, by explicit universal service support for carriers operating in rural and other high-cost areas.[28]

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[27] Broadview Comments at 34 (summarizing views of Lee Selwyn); *see also* Embarq Comments at 45-46; GVNW Consulting Comments at 5-6; Iowa Telecommunications Ass'n Comments at 14-15.

[28] *See, e.g.*, AT&T Comments at 4-7, 12-13; AT&T Missoula Reply Comments at 3-4, 8-14; Comments of SBC Communications Inc., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 1-3, 9-13 (filed May 23, 2005). ITTA argues that since rural carriers "have fewer customers over which to distribute local exchange costs, as compared to the Nation's largest carriers, [they] must rely upon access compensation as a mechanism for cost recovery." ITTA Comments at 6. This is a non-sequitur. Of course rural carriers often lack the economies of density enjoyed by more urban carriers, and their costs per subscriber are to that extent higher. But that is a reason to give them adequate access to explicit USF support mechanisms, not to impose a disproportionate burden on *interexchange carriers* to subsidize high-cost rural operations. NTCA separately argues that relieving interexchange carriers of that disproportionate burden would somehow grant them "an annual multi-billion dollar access savings windfall." NTCA Comments at 7. This is untenable—not just because it makes no

At bottom, the opponents of an incremental-cost regime simply assume that the regulatory status quo—under which each LEC looks to other carriers for the recovery of many of its own network costs—should be preserved simply because that is the way business has always been done in this industry. Again, that regulatory status quo is unsustainable, and it should be phased out now, while there is still time for an orderly transition. Significantly, there is nothing untested or hypothetical about cost-recovery regimes that require carriers to recover most of their costs from their own end users. For example, as Sprint Nextel points out, wireless carriers have long recovered costs from their own end users because they have had no regulatory entitlement to collect any compensation for terminating access traffic.[29] As the spectacular success of the wireless marketplace has demonstrated, a regime heavily weighted towards recovering network costs from one's own subscribers has worked well for wireless carriers and their customers, and it would work equally well for other carriers and their customers too.

It is also instructive to compare the proposed incremental-cost approach to a bill-and-keep methodology, under which each terminating carrier receives *no* intercarrier compensation—and looks *entirely* to its own end users—for the recovery of all costs it incurs in transporting and terminating traffic that it receives at defined points of interconnection. Section 252(d)(2) specifically preserves the Commission's authority to impose "bill-and-keep arrangements";[30] the D.C. Circuit suggested in 2002 that the Commission could appropriately impose bill and keep

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sense to characterize relief from an unjustified burden as a "windfall," but also because, as NTCA acknowledges one page later (with no apparent awareness of the contradiction), "IXCs pass on access costs in their retail long-distance rates." *Id.* at 8; *see also* AT&T Comments at 3, 7, 18-19 (discussing pass-through of access savings).

[29] *See* Comments of Sprint Nextel Corporation at 15-16 ("Sprint Nextel Comments").

[30] 47 U.S.C. § 252(d)(2)(B)(i).

even for radically unbalanced traffic;[31] and the Commission's Staff concluded in 2005 that bill and keep may well be theoretically superior to conventional intercarrier compensation regimes for all classes of traffic.[32] If, as these sources indicate, bill and keep would afford all carriers adequate opportunities to recover their network costs even though it prescribes a uniform termination rate of *zero*, it follows *a fortiori* that the Commission's proposed incremental-cost methodology would do so as well.

Finally, some commenters object on various empirical grounds to the Commission's conclusion that the incremental costs of transport and termination functions in today's forward-looking networks are likely to be very low.[33] The short answer is that the Commission need not resolve these empirical quibbles now, and it is uncertain whether the Commission will ever need to resolve them. As the *Appendix C Draft Order* makes clear, individual state commissions will arbitrate factual disputes about particular cost inputs within an incremental-cost model, just as they arbitrate factual disputes today about cost inputs in TELRIC proceedings. If the Commission decides that further methodological refinements are warranted, there will be ample opportunities to make them after the Commission has set the wheels of reform in motion. In all events, the Commission should not let the perfect become the enemy of the good, and it therefore should not delay adoption of the basic regulatory choices embodied in the *Appendix C Draft Order*.

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31 *WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002) (encouraging the Commission to consider invoking Section 252(d)(2)(B)(i) as a basis for ordering bill and keep for ISP-bound traffic).

32 *2005 Intercarrier Compensation FNPRM*, at Appx. C, *A Bill-and-Keep Approach to Intercarrier Compensation Reform: An Analysis of Pleadings in CC Docket No. 01-92 by the Staff of the Wireline Competition Bureau*.

33 *See, e.g.*, ITTA Comments at 12; Broadview Comments at 31; Citynet Comments at 19-20; Comments of Windstream Communications, Inc. at 29 n.65 ("Windstream Comments").

B. The Commission Should Phase In Its Increases To The SLC Cap

Free Press and other commenters argue that, if the Commission adopts the proposed reforms, increases in SLC caps should "be phased-in in parity with the phase-down of access charges."[34] As Free Press observes, the Commission phased in the SLC cap increases that accompanied the access charge reductions in the *CALLS Order*. AT&T agrees that such phased-in increases would be appropriate, and therefore recommends that the Commission make the proposed $1.50 residential SLC-cap increase in two equal steps of $0.75, coinciding with the two-step reduction in intrastate access charges to interstate levels.[35] Finally, as AT&T requested in its opening comments, the Commission should provide further guidance—and flexibility—concerning the relationship between intrastate retail rate increases and the SLC increases permitted under the Commission's proposed plan.[36]

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[34] Free Press Comments at 13; *see also* ITTA Comments at 9; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance at 3 ("OPASTCO Comments"); USTelecom Comments at 7.

[35] Although some commenters appear to assume otherwise, the *Appendix C Draft Order* would not guarantee that LECs could successfully implement the permitted SLC increases necessary to make them "whole" for losses in access charges and other intercarrier compensation. Instead, the *Draft Order* would give LECs an *opportunity* to recover those losses by modestly increasing current regulatory *caps* on the SLC. But competition will prevent LECs in many areas from increasing their SLCs up to the new caps. The hypothetical Oregon resident described on pages 6-7 of Free Press's comments illustrates that competitive dynamic. After consulting with her daughter, she discovers that she has a broad range of choices for voice service, including not just conventional landline service from Qwest, but wireless service from various providers, cable VoIP service from Comcast, and over-the-top VoIP service from providers such as Skype. These alternatives allow her and millions of other end users to reject any service, whether provided by an ILEC or any other company with high monthly fees. To keep her business, therefore, her ILEC may have to charge less than the maximum permitted levels.

[36] *See* AT&T Comments at 39-41; *see also* Qwest Comments at 5-9. The Commission also should make clear that the states have flexibility to accelerate the transition to the final incremental-cost-based termination rates by, for example, skipping the intermediate step of setting an *interim* uniform termination rate. *See* AT&T Comments at 22. At the same time, the Commission should make clear that states do *not* have the flexibility to *delay* the benefits of

III. THE *APPENDIX C DRAFT ORDER* IMPOSES REASONABLE "EDGE" DEFAULT RULES AND PROPERLY REFRAINS FROM IMPOSING NEW REGULATIONS ON TRANSIT SERVICES

A. Opponents Of The Draft Order's Approach Misconstrue The Proposed Edge Rules, Which Are A Fundamental Component Of Intercarrier Compensation Reform

The *Appendix C Draft Order* proposes default "edge" rules that are indispensable because they define the scope of the new intercarrier compensation regime for "transport" and "termination" under Section 251(b)(5). These rules provide that unified intercarrier rates under the new regime will apply to the transport and termination of traffic *from* the relevant "edge" of the provider serving the called party *to* the called party. The calling party's LEC or IXC will be separately and additionally responsible for the costs of transporting the call *to* the network edge of the called party's service provider using whatever arrangement or facilities it chooses to deliver the call to that edge.[37] The proposed rules further require each provider *either* to permit interconnection at its own edge *or* to arrange for transport (at no charge to the other carrier) from some other point of interconnection in the LATA to that edge.[38] The *Draft Order* also proposes a rural exception to this rule, which would shift some of the cost of transporting a call to the terminating carrier's edge to the terminating carrier and away from the originating rural carrier.[39]

A number of CLECs attack this proposal on the mistaken premise that it would somehow violate CLEC physical interconnection rights under Section 251(c)(2)(B). For example, Comptel suggests that the rules "requir[e] CLECs to interconnect at the called party service provider's network edge[s]" in violation of the CLEC's putative right to "request a single point of

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reform by setting excessively high "interim" rates: any Phase Two interim rates must be set at a level that involves meaningful reductions in terminating rates from the Phase One interstate access rate.

37 *Appendix C Draft Order* ¶ 270.

38 *Id.*

39 *Id.*

interconnection in a LATA."[40] Citynet likewise insists that the rule "is inconsistent with the plain text of the Act [which] requires ILECs to provide interconnection at any technically feasible point requested by CLECs."[41] And Broadview argues that the rule "displace[s] . . . longstanding interconnection rules, state commission arbitrations implementing those rules, and voluntarily agreed-upon arrangements contained in interconnection agreements."[42]

In fact, the proposed framework would neither limit the points at which CLECs could choose to interconnect nor interfere with their existing physical interconnection arrangements. The *Draft Order* makes clear that the default edges need *not* be the point at which carriers physically interconnect. The originating carrier may choose to interconnect at any other point permitted under existing law or an interconnection arrangement—which is all that Section 251(c)(2)(B) requires. Even the *terminating* carrier need not physically interconnect at its edge so long as it arranges in some other manner to transport traffic to its edge.[43] As Verizon explains, "these 'network edge' rules . . . . do not alter any obligations of incumbent carriers to interconnect at any technically feasible point, nor do they alter carriers' ability to request interconnection and seek arbitration of interconnection disputes."[44] Instead, the edge rules merely specify the default point at which the terminating carrier picks up the financial responsibility for transport and termination of a call under the unified rates adopted under the Section 251(b)(5) termination charge framework. As Verizon, CTIA, Embarq, and others

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40 Comptel Comments at 20-21.

41 Citynet Comments at 13; *see also* Comments of tw telecom inc., One Communications Corp., and Cbeyond Inc. at 19 ("tw telecom Comments").

42 Broadview Comments at 46-47.

43 *See Appendix C Draft Order* ¶ 270.

44 Comments of Verizon and Verizon Wireless at 54 ("Verizon Comments").

understand, these rules "merely define the services that are 'included' in the terminating rate, and allocate financial responsibility for getting traffic to and from the network edge." [45]

Broadview insists that, by making the originating carrier financially responsible for transporting its customers' calls to the relevant default edge, the proposed rules will radically shift costs from ILECs to CLECs, forcing the latter to "pay to transport traffic beyond an established point of interconnection all the way to the network's (inner) edge."[46] In fact, however, the *Draft Order* does not prescribe any particular arrangement or pricing regime for transport to the relevant edge, which would normally take the form of dedicated transport pipes (and in many cases would be the same dedicated transport pipes in use today). The terms of such dedicated transport fall outside the scope of any usage-sensitive termination rate prescribed by Section 251(b)(5)—and thus outside the proposed reform framework altogether. In proposing default edge rules, the *Appendix C Draft Order* simply clarifies the scope of the "transport and termination" to which the 251(b)(5) rate applies. And for that limited purpose it prescribes, as the "edge," the most efficient point from which calls can be terminated to a given customer.

Although some parties contend otherwise,[47] these default rules are a critical component of any comprehensive reform plan. In the absence of such rules, disputes would continue to arise about which network functions are included within the Section 251(b)(5) transport and termination rate. Indeed, for this reason, AT&T agrees with Verizon that the Commission

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[45] *See id.*; *see also* CTIA Comments at 29; Embarq Comments at 51.

[46] Broadview Comments at 46.

[47] *See, e.g.*, Comptel Comments at 9; Comments of the National Cable & Telecommunications Ass'n at 22-23 ("NCTA Comments").

should make these rules effective as soon as the interim reciprocal compensation rates are set—namely, in Phase 2 of the proposed rate reform framework.[48]

Finally, there is no basis for the argument that the edge rules are somehow deficient because they "do not make any provision for the *exchange* of IP-based traffic."[49] That argument reflects, once more, the basic misconception that the edge rules are physical "network architecture" rules.[50] These rules merely assign *financial* responsibility for the exchange of traffic on the PSTN. If and when traffic is no longer exchanged over the PSTN and carriers interconnect solely for the exchange of IP traffic, these rules will no longer be applicable. And since carriers remain free, even while the edge rules continue to apply, to *physically* interconnect at any technically feasible point, the rules have no effect on the transition to IP-to-IP network interconnection or traffic exchanges.

B. The Commission Should Reject Calls For Regulation Of Transit Rates

Although a few commenters ask the Commission to regulate transit services for the first time, those proposals have no place in this proceeding. The purpose of this proceeding is to reform the rules that remedy the "terminating access monopoly"—that is, the rules that restrict how much each carrier may charge others for *terminating their calls* in a network environment characterized by government-imposed interconnection obligations, tariffs, and, in most cases, only one pipe leading to any given called party.[51] By definition, transit providers do not terminate traffic, and they therefore have no terminating access monopoly. Any arguments about

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48 Verizon Comments at 60.

49 NARUC Comments at 23. *See also* Broadview Comments at 47; tw telecom Comments at 19.

50 Comptel Comments at 20.

51 For a general discussion of the terminating access monopoly, see Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923 (2001).

the degree of competition for the provision of transit services raise entirely distinct issues and are thus appropriately addressed, if at all, in other proceedings.

In any event, there is no basis for regulating transit services in the first place. First, as a legal matter, transit services cannot be subject to any form of rate regulation under Sections 251(b)(5) and 252(d)(2) for the simple reason that they do not involve "termination" of traffic, as Qwest explains and as the Commission itself has previously indicated.[52] Commission precedent further establishes that transit falls outside the scope of rate-regulated direct interconnection obligations under Section 252(d)(1).[53] Second, as a policy matter, transit does not need to be tightly regulated, because it has become a competitive service. While ILECs are the traditional providers of that service, competitors are increasingly entering the field. Neutral Tandem, for example, recently reported that it was operating in 91 markets, carried 15.9 billion minutes of traffic in the third quarter of 2008, and could connect calls to an estimated 372 million telephone numbers assigned to carriers.[54] Another competitive transit provider is HyperCube, LLC, which describes itself as a "premiere provider of local and national tandem services to other carriers throughout the United States via interconnected tandem switches."[55] Indeed, even some proponents of regulating transit grudgingly acknowledge the emerging "market for competitive

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52 *See* Qwest Comments at 24 (citing, *inter alia*, *2005 Intercarrier Compensation FNPRM* at 4737-38 ¶ 120, and *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005)).

53 *See, e.g.*, *id.* (citing *AT&T v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003)). *See also Appendix C Draft Order* ¶ 344 (noting that transit involves *indirect* interconnection between two networks).

54 Neutral Tandem, Form 10-Q (Nov. 12, 2008), *available at* http://biz.yahoo.com/e/081112/tndm10-q.html.

55 HyperCube, LLC corporate web site, *available at* http://www.hypercube-llc.com/corporate/network.html.

tandem switching" in at least some areas.[56] Finally, the Commission retains the authority to address any unique concerns about individual transit rates pursuant to Section 201 of the Act.

IV. THE COMMISSION SHOULD RESOLVE OUTSTANDING ISSUES RELATING TO IP/PSTN TRAFFIC, TRAFFIC PUMPING, AND PHANTOM TRAFFIC WHETHER OR NOT IT IMPLEMENTS COMPREHENSIVE REFORM

As discussed, there is no long-term alternative to comprehensive intercarrier compensation reform. But if the Commission is unable to implement such reform in the immediate future, it should promptly remedy the most pressing problems plaguing the existing regime. These include issues relating to IP/PSTN traffic, traffic pumping, and phantom traffic.[57]

A. The Commission Should Resolve Long-Pending Issues Relating To VoIP Traffic

1. The Record Demonstrates An Obvious Need For An Explicit Transitional Compensation Framework For IP/PSTN Traffic

In our opening comments, we urged the Commission to immediately clarify the intercarrier compensation rules that will apply to IP/PSTN traffic during the transition, rather than perpetuating uncertainty, inconsistency, and confusion under the guise of maintaining the "status quo." Any question about the urgent need for Commission guidance has been settled by commenters' divergent descriptions of that "status quo." Sprint Nextel, for example, argues that "until the end-state unified rate is achieved, IP/PSTN traffic should remain subject to Section 251(b)(5)/252(d)(2) compensation."[58] Broadview similarly reads the *Draft Order* to "find that IP-PSTN traffic *currently* qualifies for the ESP Exemption from the application of switched access charges."[59] On the other hand, Embarq argues that "IP/PSTN voice calls have always

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[56] Comments of the Coalition for Rational Universal Service and Intercarrier Reform at 6.

[57] *See generally AT&T July 17, 2008 Letter* at 7-10.

[58] Sprint Nextel Comments at 10.

[59] Broadview Comments at 10 (emphasis added).

been subject to access charges."[60] Qwest likewise explains—consistent with AT&T's own comments—that even though the ESP exemption clearly does not apply to such traffic, the current regime is rife with disputes, with "a number of VoIP providers . . . tak[ing] some very strange positions to avoid paying for services purchased from LECs."[61] Against this backdrop of conflicting opinions, Comptel quips: "Does the Commission intend to maintain the 'status quo' of regulatory uncertainty[?]"[62] It is a reasonable question, and one the Commission should answer in the negative by ending that regulatory uncertainty.

As explained in AT&T's opening comments (at 27-32), interexchange VoIP traffic (intrastate and interstate) during the transition should be subject to interstate access charges until those charges are phased down to reciprocal compensation levels, while "local" VoIP traffic should be subject to reciprocal compensation rates from the outset. This solution is the most appropriate compromise between (i) proposals to subject all IP/PSTN traffic, including interexchange traffic, to reciprocal compensation rates and (ii) proposals (supported by some ILECs and even some CLECs) to subject all IP/PSTN traffic, including "local" traffic, to access charges.[63] AT&T's middle-ground proposal will also come closest to preserving an equitable status quo pending comprehensive reform, given that access charges today are already paid on at least certain VoIP traffic, as the nation's largest VoIP provider and its trade association acknowledge.[64] Finally, as explained in AT&T's previous filings, the Commission can and

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60 Embarq Comments at 38.

61 Qwest Comments at 17; *see also id.* at 14-17.

62 Comptel Comments at 3.

63 *See, e.g.*, Broadview Comments at 12 (generically referring to the application of "access charges," without specifying intrastate versus interstate access); tw telecom Comments at 16-18 (same).

64 *See* Comcast Comments at 20; NCTA Comments at 24.

should promptly resolve this compensation issue whether or not it implements broader reform.[65] The last thing this industry needs is further uncertainty on this critical issue.

2. The Commission Should Confirm That All VoIP Services Are Indivisibly Interstate Information Services

Several commenters argue that the Commission need not determine the regulatory classification of VoIP services in this proceeding. They observe that, no matter how the Commission characterizes those services, it is fully authorized to determine the intercarrier compensation rules for such traffic insofar as its broader jurisdictional analysis under Section 251(b)(5) is valid.[66] Although that observation is true, the Commission *should* nonetheless resolve the proper characterization of all VoIP services, because continued uncertainty on that long-disputed issue distorts the market and impedes the deployment of advanced services.

The Commission was correct to recognize that the protocol conversion inherent in any IP/PSTN service renders it an information service under existing precedent. Several commenters argue that the type of protocol conversion at issue falls within a definitional exception for "transmission technologies used to route traffic."[67] As the Commission has explained, however, this exception applies only to the extent that there is no *net* protocol conversion between end users.[68] As Comcast points out, where this type of complete "transformation" takes place, a service easily meets the definition of an enhanced or information service under Commission

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65 *See, e.g.*, Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption," WC Docket No. 08-152, at 3-4 (filed July 23, 2008) ("*AT&T Declaratory Ruling Petition*").

66 *See, e.g.*, Windstream Comments at 26; NCTA Comments at 7; Comptel Comments at 10.

67 *See, e.g.*, Comptel Comments at 11.

68 *Appendix C Draft Order* ¶ 205 n.522.

precedent.[69] And as one court has held, "[a] net-protocol conversion occurs when an 'end user [can] send information into a network in one protocol and have it exit the network in a different protocol.' That conversion 'transforms' information, and therefore provides an 'enhanced' and an 'information' service."[70] Moreover, the conversion at issue here is far more transformative than the type of conversion that occurs when, for example, a CDMA wireless call is transferred onto a TDM-based wireline network. When a standard POTS call is converted to IP and sent via a VoIP provider to a VoIP customer, the message has not simply changed transmission technologies; it has become susceptible to an entirely new set of functions and capabilities that are integrated into the VoIP customer's service.

There is thus no merit to the "quacks like a duck" argument that Comptel and others make when they suggest that VoIP is essentially "the same service as the customer [gets when] purchasing voice service delivered over [the] circuit-switched network."[71] As Comcast, Verizon, and AT&T have explained, VoIP is a transformative service, "with characteristics in many ways distinct from pre-existing telephone services."[72] For example, Verizon notes that the "voice calling capabilities of these services are inherently tightly integrated with a host of other features and functions that themselves are information services," including access to stored files, voicemail, directory information, and the like.[73] Comcast adds that its VoIP services include functions such as online account management, email forwarding of voicemails, and other integrated capabilities that involve "generating, acquiring, storing, transforming, processing,

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69 Comcast Comments at 19.

70 *Southwestern Bell Tel., L./P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055, 1081-82 (E.D. Mo. 2006) (citations omitted).

71 Comptel Comments at 14-16; tw telecom Comments at 12

72 *Appendix C Draft Order* ¶ 205.

73 Verizon Comments at 22-23.

retrieving, utilizing, or making available information."[74] Thus, wholly apart from the net protocol conversion that takes place on an IP/PSTN call, the other unique attributes of VoIP establish it firmly within the "information services" framework, and the Commission should so conclude.

In addition to classifying VoIP as an "information service," the Commission should not only affirm but expand on its prior finding in the *Vonage Order* that VoIP services are indivisibly *interstate* in character and that core federal objectives justify insulating these services from traditional state telecommunications regulation. As Verizon explains in detail, VoIP services—whether fixed or nomadic—are "any-distance, integrated offerings" that do not break down into neat jurisdictional categories.[75] The Commission should make this finding explicit here. The same features that make VoIP an information service make it inherently interstate—or at minimum, make it insusceptible to any traditional jurisdictional analysis.[76] Moreover, as the courts have found, even if there are some aspects of VoIP services that can be jurisdictionalized for some limited purposes without negating federal policy, it would be nonsensical to require providers to divide all VoIP services into separate interstate and intrastate components merely to provide a jurisdictional basis for applying the full panoply of state regulation. *Minn. PUC*, 483 F.3d at 578. In sum, for all of the reasons explained in the *Vonage Order,* state regulation of VoIP services—whether nomadic or fixed—should be preempted because it would inevitably

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74 Comcast Comments at 19 (quoting 47 U.S.C. § 153(20)); *see also* AT&T Comments at 23-25; *AT&T Declaratory Ruling Petition* at 32-33; 47 U.S.C. § 153(20).

75 *See* Verizon Comments at 5-27.

76 Memorandum Opinion and Order, *Vonage Holdings Corp.*, 19 FCC Rcd 22404, 22419-21 ¶ 25 (2004) ("*Vonage Order*") (noting VoIP's "inherent capability . . . to enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously"); *see also Minnesota Pub Utils. Comm'n v. FCC*, 483 F.3d 570, 578 (8th Cir. 2007).

reach some interstate components of those services and thereby interfere with a distinct federal interest in keeping these services *unregulated*.[77]

Commission clarification of these questions will allow all providers to deploy VoIP services with a clear understanding of the applicable rules. As Comcast notes, such clarification will "promote the goals of section 706 by encouraging increased investment in and deployment of the infrastructure necessary to support broadband services."[78] The only competing concern some commenters raise is the fear that the Commission's classification of VoIP as an information service—and its preemption of state regulation—will somehow deprive VoIP providers or their CLEC partners of existing interconnection or related rights.[79] But as AT&T and Verizon have made clear, these determinations "will not interfere with the existing rights of competitive carriers to interconnect and to use the state arbitration process as provided in the Act."[80] Any certificated telecommunications carrier will continue to have whatever rights it has today under the Act and state law. To remove any possible doubt on this point, the Commission should expressly ratify the Wireline Competition Bureau's *Time Warner* decision, which held that CLECs who choose to serve VoIP providers (including those providers' own CLEC

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77 *See Vonage Order* at 22424 ¶ 32 (noting that other IP-enabled services like the Vonage VoIP service at issue, which included broadband, IP-compatible CPE, a suite of integrated capabilities and features that could be involved sequentially or simultaneously and that allowed dynamic management of personal communications, including voice and video, were "practical[ly] inseverab[le]" and "would likewise preclude state regulation to the same extent"). As AT&T has explained, the conflict inherent in having fifty states regulate such services as Title II telecommunications services need *not* foreclose states from imposing state USF and TRS contribution obligations on VoIP providers. The Commission can and should make clear that such regulation does not conflict with federal policy, which similarly imposes the same type of obligations. *See* AT&T Comments at 50-51.

78 Comcast Comments at 20-21.

79 *See e.g.*, Time Warner Cable Comments at 3-7; *see generally* NCTA Comments.

80 Verizon Comments at 27; *see also* AT&T Comments 25, 31 & n.42.

affiliates) still have statutory interconnection rights, regardless of how VoIP providers' retail VoIP service is ultimately classified.[81]

B. The Commission Should Promptly Ban Traffic-Pumping And Phantom-Traffic Schemes

AT&T's opening comments addressed two particularly pernicious types of arbitrage schemes: *traffic pumping*, in which LECs in rural areas with high access rates enter into revenue-sharing arrangements with third parties in order to artificially inflate traffic volumes and generate windfall profits; and *phantom traffic*, in which carriers avoid appropriate access charges by disguising the source or jurisdictional nature of their traffic. There is broad consensus that both traffic pumping and phantom traffic are serious problems and that the Commission should remedy them immediately.

Although the Commission did not propose a specific solution to traffic pumping in any of the draft orders, commenters from every segment of the industry have called on the Commission to take quick and decisive action to ban such schemes.[82] Those commenters explain that traffic pumping severely distorts competition, bilks ordinary end users to enrich unscrupulous arbitrageurs, and should be curtailed now, regardless of when the Commission adopts

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[81] Memorandum Opinion and Order, *Time Warner Cable Request for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513 (2007) ("*Time Warner Order*").

[82] *See, e.g.*, Free Press Comments at 6 ("[T]he Commission should be concerned with such arbitrage, because it distorts investment incentives and leads to inefficient investment," with "subsequent welfare impacts . . . on consumers."); Verizon Comments at 67-70 ("The Commission should put an end to the traffic pumping arbitrage scheme, once and for all, regardless of whether it adopts comprehensive reform."); Sprint Nextel Comments at 8 ("[I]t is critical that the Commission act immediately to curtail the deleterious effects of traffic pumping."); Broadview Comments at 9 (noting that the record on traffic pumping "is complete, and the Commission can now act in WC Docket No. 07-135 to select the solution that it deems most appropriate . . ."); Nebraska PSC Comments at 2, 5, 21 (noting that "access stimulation issues definitely should be addressed by the Commission in the short-term").

comprehensive intercarrier compensation reform. The Commission should heed that nearly universal call for action.

Similarly, a broad range of commenters agree that phantom traffic is a serious problem that likewise requires an immediate solution.[83] Although some commenters raise concerns that the proposed solution in the *Appendix C Draft Order* might penalize carriers that should not be held responsible for the "phantom" nature of the traffic they transmit,[84] the Commission can and should eliminate those concerns by adopting the exceptions set out in the Missoula Plan.[85] As AT&T explained in its opening comments, the Missoula Plan identifies several specific situations in which standard industry practice allows departure from call-signaling content rules.[86] In its phantom-traffic rules, the Commission should accordingly identify those situations as included within the "limited exception[s]" to the general rules.[87]

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83 *See, e.g.*, Nebraska PSC Comments at 2, 5, 21-22 (a requirement that carriers properly label traffic "should be implemented as soon as practicable"); Broadview Comments at 6-9 (calling the phantom-traffic problem a "discrete intercarrier compensation issue[] [that] can and should be resolved immediately" (capitalization altered)); Verizon Comments at 63-67 (noting that "[t]he phantom traffic solution contained in the draft orders . . . represents a balanced approach to phantom traffic and could be adopted on a standalone basis, even if the Commission does not adopt all parts of the draft orders"); Windstream Comments at 24-26 ("Windstream largely supports the phantom traffic reform measures proposed by the Commission."); NCTA Comments at 5 (supporting the approach to phantom traffic set out in the *Draft Order*); GVNW Consulting Comments at 10.

84 *See, e.g.*, ITTA Comments at 14 n.27 (the Commission's plan to allow terminating carriers to charge their highest rate for phantom traffic is "punitive to tandem operators who may be unable through no fault of their own to obtain proper signaling information from the originating carrier"); CenturyTel Comments at 8-9 (suggesting protections for transit carriers).

85 *See Missoula Plan*, Section V.B at 57-58.

86 AT&T Comments at 36.

87 *Appendix C Draft Order* ¶ 331.

V. THE COMMISSION SHOULD MAKE LONG-OVERDUE REFORMS TO THE UNIVERSAL SERVICE SYSTEM

A. The Commission Should Move Swiftly To Implement A Numbers-Based Or Numbers/Connections-Based Contribution Mechanism To Fix Today's Unsustainable Revenues-Based System

The Commission's proposal to replace the outdated and long-broken revenues-based USF contribution system enjoys the dual attributes of almost universal support and relative simplicity. The Commission should heed commenters' calls for reform and act now to replace that existing system with one based on numbers or numbers and connections.

It has been nearly eight years since the 2001 rulemaking in which the Commission first proposed reform of the revenues-based framework. Even then, the Commission found that "the telecommunications marketplace has undergone dramatic changes that may necessitate a reexamination of the way in which we recover universal service contributions."[88] The Commission warned then, and has repeated thereafter,[89] that the contribution base would erode in the face of trends toward bundled, all-distance services and away from traditional technologies. Almost a decade later, those trends all but define the modern telecommunications industry. As a result, the Commission has had to "repeatedly patch[] the current system to accommodate decreasing interstate revenues, a trend toward 'all-you-can-eat' services that make distinguishing interstate from other revenues difficult if not impossible[,] and changes in technology." *Appendix C Draft Order* ¶ 93. These patches have been ineffective or worse. Increasing the contribution factor on covered services to combat decreasing assessable revenues

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88 Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 9892, 9899-9000 ¶¶ 12-13 (2001).

89 *See, e.g.*, Report and Order and Second Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 24952, 24955 ¶ 3 (2002); Report and Order and Notice of Proposed Rulemaking, *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7520, 7527-29 ¶¶ 3, 17-19 (2006).

exacerbates the problem by raising the retail prices of those services and thus encouraging migration away from them in favor of uncovered substitutes or by giving carriers perverse incentives to misallocate their revenues to lessen their contribution obligations. In the Commission's own words, the result is a contributions system that is "severely strained." *Id.*

Yet there has never been a greater need for a robust and stable universal service contribution base. As recognized in the draft orders attached to the *Further Notice*, the United States cannot maintain a leadership role in the world economy without a world-class telecommunications infrastructure. That in turn will require, *at a minimum*, the continued availability of existing support. Thus, wholly apart from whether additional funding is needed, the Commission cannot continue ignoring the increasingly destabilizing effects of today's anachronistic contribution methodology on the universal service system as a whole. To the contrary, contribution reform is an urgent imperative.

The record in this proceeding provides full support for moving forward. The commenters overwhelmingly support replacing the end-user-revenues mechanism with some type of numbers-based mechanism.[90] Indeed, with the exception of the isolated comments discussed

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[90] *See, e.g.*, Sprint Nextel Comments at 39; Verizon Comments at 32-33; CTIA Comments at 19; Qwest Comments at 40-41; Comments of Trilogy International Enterprises, LLC at 2 ("Trilogy Comments"); Comments of the Washington Independent Telecommunications Ass'n and the Oregon Telecommunications Ass'n at 10; Comments of the Michigan Public Service Commission at 5 ("Michigan PSC Comments"); Comments of T-Mobile USA, Inc. at 15; Comments of the Public Utilities Commission of Ohio at 36; ITTA Comments at 27; Comments of the Public Service Commission of the State of Missouri at 13; Comments of Network Enhanced Telecom, LLP at 2, 4 ("NetworkIP Comments"); Comments of the VON Coalition, CCIA, ITI, Net Coalition, Technet, and TIA at 16 ("High Tech Ass'ns Comments"); OPASTCO Comments at 6, 7; Comments of the AdHoc Telecommunications Users Committee at 14-15 ("AdHoc Comments"); Joint Comments of Alpheus Communications, L.P. and Covad Communications at 2-3 ("Covad Comments"); Comments of Global Crossing North America, Inc. at 12 ("Global Crossing Comments"); Comcast Comments at 30; Comments of the California Public Utilities Commission and the People of the State of California at 12 ("California PUC Comments"); Comments of the Public Service Commission of Wisconsin at 3-4; Comments of the Oklahoma

below, the record is almost entirely devoid of opposition to the need for such reform. To the extent there is disagreement, it focuses primarily on the implementation details of the replacement approach. AT&T believes that those details can and should be resolved promptly.

As several commenters observe, and as AT&T previously has suggested, the simplest way to implement this core reform would be to move to a unified contribution mechanism that is based solely on numbers.[91] The numbers-only mechanism described by AT&T and Verizon in their September 11, 2008 ex parte[92] would be straightforward and neutral across technologies and end users. It would also be entirely predictable in application, easy to audit, and readily extendable to new and emerging technologies. These virtues of a numbers-based approach are beyond dispute. Indeed, the Commission itself ascribes these attributes to the numbers-based portion of the hybrid numbers/connections-based mechanism it proposes in the *Appendix B Draft Order*.[93] Conversely, many of the criticisms that commenters raise concerning the Commission's hybrid contribution reform proposal relate specifically to the inclusion of connections as part of the methodology, since—as proposed in the draft orders—a connections component would complicate compliance and raise various questions concerning the appropriate and equitable assessments for connection-based customers.[94] Contrary to the suggestion in the

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Rural Telephone Coalition at 6; CenturyTel Comments at 5, 7; Cincinnati Bell Comments at 18; Qwest Comments at 41; Embarq Comments at 17; Windstream Comments at 60-61.

[91] *See, e.g.*, Verizon Comments at 33; Covad Comments at 2-3; Cincinnati Bell Comments at 19-20; Global Crossing Comments at 12-13; AdHoc Comments at 14-20.

[92] *See* Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Sept. 11, 2008).

[93] Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), FCC No. 08-262, at Appx. B ¶¶ 53-59 (rel. Nov. 5, 2008) ("*Appendix B Draft Order*").

[94] *See, e.g.*, Covad Comments at 2-5; Comptel Comments at 23-28; Citynet Comments at 24-26; AdHoc Comments at 19-20.

Appendix B Draft Order (at ¶ 78), moreover, a numbers-only mechanism would fully comport with existing law. As Verizon explains, Section 254(d) requires providers of interstate services to contribute on a non-discriminatory *basis*, but it does *not* require such providers to contribute on every interstate *service*.[95]

If, however, the Commission continues to prefer a dual numbers- and connections-based system, AT&T joins the overwhelming consensus that the proposal in the *Appendix B Draft Order* is, with certain modifications, the appropriate basis for reform, and urges the Commission to adopt it as soon as possible. That proposal would assess all numbers (residential *and* business) one flat amount and adopt an additional assessment for dedicated interstate business connections. Though more complex than a numbers-only plan, this proposal is similarly technology-neutral and easily applied to emerging services. As discussed below, so long as the Commission modifies the tiers for assessing business connections, this approach would be equitable, easily enforceable, and much more straightforward and predictable than today's regime.

In this respect, the proposal set out in the *Appendix B Draft Order* stands in stark contrast to the proposals in the *Appendix A Draft Order*[96] and *Appendix C Draft Order*. First, those proposals, while acknowledging the need to end reliance on a revenues-based contribution system, would perpetuate that very system for businesses for the foreseeable future (*i.e.*, "while we conduct a proceeding to implement the connections-based contribution methodology").[97] By

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[95] *See* Verizon Comments at 33 n.39 (citing Section 254(d)); *see also* AdHoc Comments at 20-22 (explaining that Section 254(d) does not require identical contribution methodologies to be used for different services and citing the *de minimus* exemption in Section 254(d)).

[96] Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), FCC No. 08-262, at Appx. A (rel. Nov. 5, 2008) ("*Appendix A Draft Order*").

[97] *Id.* ¶ 133; *Appendix C Draft Order* ¶ 129.

retaining revenues as the basis for contribution on business services—and thereby perpetuating the most unsustainable feature of today's contribution system—these proposals would in fact undermine the transition to a more stable and predictable system.[98] Second, the approach in the *Appendix A Draft Order* or *Appendix C Draft Order* would create regulatory confusion and a new generation of arbitrage opportunities by differentiating between "residential" and "business" customers and imposing a numbers-based contribution obligation only on the former.[99] And even beyond these concerns about regulatory certainty and stability, these proposals would create burdensome record-keeping and other implementation nightmares for providers.[100] Accordingly, the only workable hybrid mechanism on the table is the *Appendix B Draft Order*, which moves immediately away from a revenues-based approach and dispenses with unnecessary complexities and artificial distinctions between residential and business customers.

Nevertheless, certain modifications should be made to the *Appendix B Draft Order* to ensure that it can be implemented equitably, as Section 254 requires.[101] The most important of these is modification of the contribution tiers associated with connections. As Covad and others point out, the tiers set forth in the *Appendix B Draft Order* would disproportionately burden

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98 *See, e.g.*, Verizon Comments at 36-37; AdHoc Comments at 14, 24-25; Windstream Comments at 60-62; Covad Comments at 2-3; NetworkIP Comments at 5-9; Sprint Nextel Comments at 52.

99 AT&T Comments at 50; Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket Nos. 96-45 and 01-92, at 9-11 (filed Nov. 21, 2008) ("*AT&T Nov. 21 Ex Parte*"); Verizon Comments at 36-37; Covad Comments at 7 ("[R]equir[ing] carriers to determine how a customer is using a particular service in order to classify it for USF contribution purposes . . . has been a significant problem with the current methodology."); Broadview Comments at 54-56.

100 *See* Verizon Comments at 36-37; Broadview Comments at 54-56; Trilogy Comments at 2; Cincinnati Bell Comments at 19-20; Comments of the USA Coalition & Rural Cellular Ass'n at 27-28 ("USA Coalition Comments").

101 AT&T detailed a number of proposed modifications to the *Appendix B Draft Order* in the *AT&T Nov. 21 Ex Parte*. While AT&T does not repeat all of them here, it continues to urge the Commission to make all of those recommended changes.

small businesses (which use smaller increments of capacity) with excessive contribution obligations.[102] The revised tiers that AT&T proposed in its October 29 ex parte filing were specifically designed to address this unintended consequence of the original tiers previously proposed by AT&T and Verizon.[103] Even commenters most critical of the existing tiers recognize that the revised tiers are an improvement over those in the *Appendix B Draft Order*.[104] In Covad's words, "[t]he AT&T alternative makes great strides in fixing the inequities inherent in Proposal B by creating broadband usage tiers that treat small businesses more fairly and ensure small businesses are not left bearing the brunt of universal service contribution."[105] The Commission accordingly should adopt the revised tiers submitted by AT&T.

The Commission should promptly adopt this modified proposal, while retaining the ability to make additional adjustments to the specific assessment levels as future circumstances may warrant. Once the Commission adopts the tier categories, contributors can begin the work to their systems that will be necessary to record and report Assessable Numbers/Connections.[106] The Commission then can use the period when carriers must "double report" on both their revenues and their Assessable Numbers/Connections to evaluate the sufficiency of the initial assessments, with input from the industry, of course—and can modify them if necessary to

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[102] *See, e.g.*, Covad Comments at 3-4; Comptel Comments at 24-28; Broadview Comments at 56.

[103] Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 29, 2008).

[104] *See, e.g.*, Covad Comments at 5; Comments of Megapath Inc. at 2-4.

[105] Covad Comments at 5.

[106] In fact, if the Commission decides to proceed with one of its other two proposals, and thus seeks further comment on the connections-based approach, it should delay implementation of the numbers-based assessment as well until it finalizes the connections component. It would be burdensome and inefficient for contributors to make some but not all of the changes to their billing systems. Beginning that process but not completing it would likely extend the time for and increase the costs of implementation.

ensure that the right amount of funding is collected, and in an equitable manner. Among other things, the Commission should be careful to ensure that any modification to the connection assessments retain the relative relationships among Assessable Numbers and connections.[107]

Several other modifications to the *Appendix B Draft Order* would also be in order, as several commenters note:

- **The Commission Should Simplify the Definition of "Assessable Number":** The Commission should adopt AT&T's and Verizon's proposed definition of this term, which is preferable to the one the Commission advanced in the draft orders.[108] As several commenters note, the Commission's definition is confusing and laden with provisos and exceptions that should be rejected in favor of the simpler approach that AT&T and Verizon have suggested.[109] And the Commission should in all events reconsider its proposal to include not only NANP numbers but also "functional equivalent identifier[s]" within the definition of "Assessable Numbers."[110] The "functional equivalent" category is highly ambiguous, and it could be read to broadly sweep any number of now-exempt services into the category of USF contributors.[111] For example, as Verizon points out, "Private Chat" services associated with Xbox Live gaming systems or computer-to-computer game systems might have some limited "functional equivalence" to an end-user NANP number, for specific purposes—but no one seriously proposes to subject these services to USF obligations.[112] Nor, as several commenters note, is there any need for the Commission to expand the contribution base so dramatically at this time. The Commission can address the need to assess such "identifiers" if and when there is any evidence that they are displacing NANP numbers—whether in an effort to avoid universal service obligations or simply as a result of technological change.[113]

- **The Commission Should Apply the Same Contribution Methodology Across the Universal Service, TRS, LNP, and NANP Funds.** Commenters broadly agree with AT&T that it would make no sense to apply different contribution methodologies for

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107 *See, e.g.*, Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45, at 2 (filed Oct, 20, 2008) ("*AT&T/Verizon Oct. 20 Ex Parte*").

108 *AT&T/Verizon Oct. 20 Ex Parte*, Attachment at 1; *AT&T Nov. 21 Ex Parte* at 3-5.

109 *See, e.g.*, Verizon Comments at 34-35; Sprint Nextel Comments at 46.

110 *Appendix B Draft Order* ¶ 63.

111 AT&T Comments at 47-48; *AT&T Nov. 21 Ex Parte* at 3-4; Sprint Nextel Comments at 44-45; Verizon Comments at 34-35; High Tech Ass'ns Comments at 18-19.

112 Verizon Comments at 35.

113 Sprint Nextel Comments at 45; Verizon Comments at 35; *AT&T Nov. 21 Ex Parte* at 4.

these various funds. Indeed, doing so would be contrary to Commission precedent and would create an administrative and compliance nightmare.[114]

- **The Commission Should Lengthen the Implementation Period:** As AT&T explains in its opening comments,[115] and as many other commenters argue as well,[116] six months is an inadequate period of time in which to modify carrier systems to enable them to track and report numbers and/or connections. This concern would not be resolved by the additional six-month grace period the Commission has provided before *contribution* obligations begin, since carriers will still face *reporting* obligations during that period. And the short amount of time provided in the *Appendix B Draft Order* is insufficient for modification of carriers' existing systems. The Commission should therefore allow an additional six months for such modifications.[117]

- **The Commission Should Clarify that Assessable Number Counts Should Be Recorded Monthly, Not Daily.** The *Appendix B Draft Order* states that contributors would have to report Assessable Numbers and Connections on a monthly basis, but also notes that the reports must indicate numbers that are in use "during any point in the relevant month."[118] Some commenters read the latter phrase to create confusion about whether providers must keep track of numbers and connections on a daily basis.[119] The Commission should confirm that contributors need only count their Assessable Numbers and Assessable Connections on a *monthly* basis—for example, at the end of the month—not on a daily one.

- **The Commission Should Ensure that the Charges Will Remain Stable and Not Be Subject to Change on a Regular Basis.** At least one commenter raises questions concerning how frequently the Commission might revise the Assessable Number and Assessable Connection charges.[120] When AT&T and Verizon proposed the tier and number charges, they were designed to be fixed, flat-rate amounts that would be

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[114] *See AT&T Nov. 21 Ex Parte* at 6-7; AT&T Comments at 48-49; Trilogy Comments at 4; Sprint Nextel Comments at 52-53; Covad Comments at 8-9; Windstream Comments at 60-62; Massachusetts Department of Telecommunications and Cable Comments at 26; Comments of the National Exchange Carrier Ass'n, Inc. at 43 ("NECA Comments"); Verizon Comments at 39; Cincinnati Bell Comments at 19.

[115] AT&T Comments at 48.

[116] Sprint Nextel Comments at 54; Covad Comments at 9; Cincinnati Bell Comments at 24-25; Qwest Comments at 42-43; Citynet Comments at 28.

[117] The implementation period is yet another reason that the Commission should move promptly to adopt contribution reform: even once the Commission has enacted the new mechanism, it will be a year before those reforms are fully in place.

[118] *Appendix B Draft Order* ¶ 96.

[119] *See, e.g.*, Sprint Nextel Comments at 53; Cincinnati Bell Comments at 20.

[120] *See* Sprint Nextel Comments at 53.

> sufficient to cover funding demand for the foreseeable future. The Commission should clarify that it will not modify these charges (up or down) unless absolutely necessary.[121] Given the increased overall stability of a numbers-based system, AT&T believes that the Commission should reduce consumer confusion and costs for both contributors and administrators by eliminating or at least minimizing the regular fluctuations in charges that occur today.

None of these modifications would be difficult to implement, and none should slow the Commission's adoption of a new contribution mechanism to replace the broken revenues-based model. As noted above, the minimal opposition to this long-overdue development is isolated and insubstantial. For example, although Broadview contends that such reform would be too "complex,"[122] AT&T and others have demonstrated that this is simply untrue and is, in reality, nothing more than empty rhetoric in support of the do-nothing approach that has mired the industry in its current problems. And although NTCA and NASUCA express a preference for today's revenues-based approach,[123] NTCA acknowledges that this approach could work, if at all, only if the Commission dramatically broadened the contribution base to include all manner of facilities-based, IP-enabled, "broadband information services,"[124] presumably including content delivery networks such as those owned by Akamai or Google. This "solution" would expand the Commission's authority into uncharted territories, and, to the extent the Commission tries to draw lines to identify those Internet-based companies that are subject to contribution

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[121] As AT&T and Verizon proposed in their October 20, 2008 ex parte, USAC should be permitted to collect any overage in an account that could be applied to cover any fluctuations in funding needs year to year. The Commission could then establish upper and lower thresholds for this account that would trigger review of the USF charges, up or down. *AT&T/Verizon Oct. 20 Ex Parte* at 3.

[122] Broadview Comments at 54.

[123] NTCA Comments at 26-29; Comments of the National Ass'n of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples' Counsel, the Utility Reform Network, and the Utility Consumer Action Network at 39 ("NASUCA Comments").

[124] NTCA Comments at 27.

obligations and those that are not, it would generate a brand new welter of destabilizing new arbitrage opportunities as well.

In short, contribution reform stands out as a step on which almost the entire industry is in sync. Given the breadth of this support and the pressing need for reform, the Commission should move forward promptly.

B. Proposals For Reform Of USF Distribution

A key component of the Commission's proposals for reforming USF distribution is reduction of CETC funding through elimination of the "identical support rule." If the Commission proceeds with this approach, AT&T urges the Commission, consistent with the views of most commenters, to phase out legacy CETC funding over a five-year transition period, as opposed to a flash-cut to zero.[125] The *Appendix C Draft Order* purports to establish such a transition,[126] but as Verizon and CTIA note, that order, as currently drafted, would actually result in a four-year transition. In particular, because it proposes an *immediate* reduction of 20 percent of CETC funding on the effective date of the order, rather than one year *after* the effective date of the order, it would produce five 20-percent reductions by the end of four years.[127] The Commission should modify the language in the *Appendix C Draft Order* to make clear that the

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[125] CenturyTel Comments at 7-8; Verizon Comments at 28-30; CTIA Comments at 17; Michigan PSC Comments at 3-4; Comments of the National Exchange Carrier Ass'n, Inc. at 16-17 ("NECA Comments").

[126] *Appendix C Draft Order* ¶¶ 17, 52.

[127] Verizon Comments at 30 ("The phase-down of competitive ETC support should begin with a 20 percent reduction in funding the year following the effective date of the order. The draft order, however, proposes an immediate flash cut of 20 percent of competitive ETC funding, which would effectively convert a five-year transition for wireless carriers into a four-year transition."); CTIA Comments at 17 (noting that, under the *Draft Order* as written, "all CETC support would be eliminated at the end of the fourth year following the beginning of the transition."); *see also* Centennial Comments at 3.

transitional phase-down of CETC funding will take place over the full five years it has proposed, and not just four.

Many commenters also have expressed the well-founded concern that none of the proposals attached to the *Further Notice* would address the Tenth Circuit's February 2005 remand in *Qwest Communications International Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).[128] As AT&T has explained, these reforms are necessary to ensure that high-cost funding is sufficient for and appropriately targeted to the highest-cost areas where support of facilities is most critical to ensure affordable services, even in states whose average *statewide* costs are moderate (because they contain a mix of large, densely populated urban areas and remote, high-cost rural areas). High-cost areas that receive no funding under the framework in place today would be left even further behind if the Commission were to adopt the broadband USF proposals without first ensuring that high-cost support is more appropriately targeted.[129] As the Commission crafts its final USF distribution-reform plan, it therefore must include provisions to address these remand issues.

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[128] *See, e.g.*, Qwest Comments at 36-38; USA Coalition Comments at 4-7; Comments of the Washington Utilities and Transportation Commission at 6-7; Comments of the New Jersey Division of Rate Counsel at 43-48.

[129] Indeed, several commenters recommend that the Commission *first* tailor the high-cost mechanism so that support is sufficient for and directed to areas where funding is needed most, and *then* adopt measures to ensure that the funding targeted to those areas supports the deployment of broadband facilities in particular. *See, e.g.*, California PUC Comments at 9; Qwest Comments at 38. As AT&T has explained, the Commission should issue an order addressing the Tenth Circuit's second remand as quickly as possible. AT&T Comments at 45.

CONCLUSION

With the modifications discussed in AT&T's opening comments and above, the Commission should adopt the reform plan for intercarrier compensation outlined in the *Appendix C Draft Order* and the USF reform plan outlined in the *Appendix B Draft Order*.

Respectfully submitted,

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